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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	
	)	

To: The Commission

REPLY OF TIME WARNER ENTERTAINMENT COMPANY, L.P. TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

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August 4, 1993

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SUMMARY

Time Warner has petitioned the Commission to reconsider several aspects of its rate regulation rules that will have significant unintended adverse effects on the cable industry. Time Warner also has opposed certain reconsideration petitions that, if adopted, would lead to further deleterious impact on the cable industry. Although there are a number of reconsideration issues to be addressed by the Commission, Time Warner asks in this Reply that the Commission focus on the following points:

- The call for "regulatory parity" between telephone companies and cable operators is a misnomer. Federal law prohibits regulation of cable operators as common carriers.

- Equipment sales should not be subject to rate regulation nor should equipment required to receive pay services be regulated as if it were basic service equipment.

- Cable operators should not be required to include franchise fees in advertised rates; this requirement is unnecessarily burdensome and will exacerbate consumer confusion.

- Leased access rules must be equitable for cable operators. Proprietary information between cable operators and programmers must remain private. Further, when setting rates for leased access, the Commission should look to the market price of the channel and permit the operator to charge the lost opportunity cost of the channel.

- MDUs represent a separate market for video programming distributors and the Commission's rules should facilitate deregulation where the MDU market is truly competitive. In addition, cable operators should be able to give discrete bulk rate discounts in order to compete in the MDU market.

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REPLY OF TIME WARNER ENTERTAINMENT COMPANY, L.P., TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

Time Warner Entertainment Company, L.P. ("Time Warner"), by its attorneys, and pursuant to Section 1.429(g) of the Commission's rules, respectfully submits its Reply to Oppositions to Petitions for Reconsideration in the above-captioned proceeding. Time Warner's Reply addresses the following issues: (i) unwarranted demands for "regulatory parity" between telephone companies and cable operators; (ii) the Commission's overly broad regulations regarding cable equipment rates; (iii) the unnecessary requirement that advertised cable rates include franchise fees; (iv) needed refinements in the Commission's leased access rules; and (v) the promotion of procompetitive pricing flexibility for MDUs.[1]

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[1]The City of Austin, Texas lodged a "formal complaint" against Austin Cablevision by letter dated July 20, 1993, which was inadvertently placed in this rulemaking docket. Austin (continued...)

DISCUSSION

I. The Commission Should Summarily Reject Calls For "Regulatory Parity" And Reconsider Its Regulatory Scheme In Light Of Its Adverse Consequences For Cable Growth.

In the current round of pleadings in this docket, BellSouth, GTE and USTA have joined Bell Atlantic in urging the Commission to contrive "regulatory parity" between telephone companies and cable operators and to otherwise regulate cable services in ways which will stifle their growth and competitiveness. The efforts of these petitioners are remarkably unsubtle: they seek quite simply to economically impair the cable industry.[2]

Far from being arbitrary, as Bell Atlantic contends,[3] application of different regulatory schemes to cable and telcos is mandated by § 621(c) and Congressional intent. Congress expressly foreclosed the telephone company model of regulation in the 1992 Cable Act. In any event, the fact that either the Congress or the FCC would design different regulatory treatment for different industries should surprise no one. Confounded by

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[1](...continued)
Cablevision, a Time Warner company, will file a response in due course pursuant to 47 C.F.R. § 76.7.

[2]The telcos are nothing if not flexible. On the one hand, they seek to have cable operators regulated in a manner identical to local telcos in all relevant respects. On the other hand, they seek to have the Commission apply what they perceive as the beneficial aspects of the Rate Order to their operations.

The first entreaty is contrary to § 621(c) of the Communications Act and the legislative history of the 1992 Cable Act. The second entreaty is outside the scope of the instant proceeding. Both should be summarily rejected by the Commission.

[3]Bell Atlantic Opposition at 6.

these facts, Bell Atlantic and its trade association are reduced in their Oppositions to hurling invectives at cable operators in the misguided hope that the Commission will mistake heat for light.

In considering the urgings of the telephone companies, the FCC need only recognize that the telephone companies have strong incentives to exploit the reregulation of cable to line their own pockets. The very fact that telcos are arguing that their cable competitors should be governmentally mandated to reduce prices strongly suggests a desire to impede the growth of a significant competitive threat. The abuse of the regulatory process is hardly a new phenomenon; the Commission should recognize it for what it is and dismiss it out of hand.

Arguments put forth by GTE and NATOA that the Commission's regulatory scheme will not affect the quality, quantity or variety of cable programming[4] are either naive or guileful -- but they are definitely wrong. Both this record[5] and the Commission's own prior findings[6] establish that there has been a demonstrable, inverse relationship between cable regulation and channel capacity and programming investment. Reregulation as

[4]GTE Opposition at 4.

[5]See Lewis J. Perl, Linda McLaughlin and Jonathan Falk, "Econometric Assessment of the FCC's Benchmark Model," June 18, 1993, and Daniel Kelley, "The Social Costs of Tier Neutrality," June 21, 1993, filed with Time Warner's Petition.

[6]Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, Report, MM Docket No. 89-600, 5 FCC Rcd 4962 (1990).

proposed here threatens both reductions in existing services and the curtailment of future services.[7] The indirect adverse consequences of overreaching regulation have been fully documented by cable operators,[8] cable equipment suppliers,[9] cable programming suppliers,[10] and financial institutions.[11] These warnings should be heeded, notwithstanding the objections raised by those who apparently still believe in the proverbial "free lunch."[12]

II. The Commission's Expansive Rules Relating To Cable Equipment Rates Are Unnecessary And Unwarranted.

In its Opposition, NATOA has attempted to defend the Commission's overly broad regulatory approach with respect to the rates and prices charged by cable operators for equipment. For example, NATOA suggests that the Commission's decision to

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[7]Some MSOs have already announced the possibility of curtailing previously planned infrastructure upgrades. See Multichannel News, July 12, 1993, at 1.

[8]See, e.g., Time Warner Petition at 12-13; Liberty Media Corp. Petition at 14-21; Newhouse Broadcasting Corp. Petition at 12-14; Tele-Communications, Inc. ("TCI") Petition at 24-33; NCTA Petition at 16-17, 20-24.

[9]See, e.g., Corning, Inc. and Scientific-Atlantic Petition at 5-20; General Instrument Opposition at 8-19.

[10]See, e.g., Discovery Communications, Inc. Petition at 3-5; The Disney Channel Petition at 6-7; Black Entertainment Television Petition at 9-12.

[11]See Letter from Douglas B. Smith, The Bank of New York, and Thomas E. Carter, NationsBank, to James H. Quello, Chairman, FCC, filed June 23, 1993.

[12]The fact that cable reregulation has not completely halted forward-looking plans of the industry, such as the Time Warner - US West transaction, is by no means evidence that the regulatory plan represents optimal public policy.

regulate a cable operator's sale of equipment is consistent with the 1992 Cable Act.[13] However, as Time Warner established in its petition, regulatory control over the sale of equipment is neither authorized under the 1992 Cable Act nor is it warranted given the existence of a competitive consumer marketplace for cable equipment.

Specifically, Section 623(b)(3) of the 1992 Cable Act directs the Commission to adopt an "actual cost" standard for "the installation and <u>lease</u>" of certain equipment used by basic subscribers. If Congress had intended the Commission to adopt rules governing the sale of such equipment as well, it could have said so easily enough.[14] Furthermore, the legislative history supports the conclusion that what Congress was concerned about in adopting Section 623(b)(3) was the rental fees cable operators charge basic subscribers when they lease equipment, not the price at which equipment is offered for sale.[15] Indeed, as Time Warner has shown in the inquiry currently being conducted by the Commission pursuant to the Act's Consumer Electronics

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[13]NATOA Opposition at p.20 n.25.

[14]For example, Section 17 of the 1992 Cable Act, "Consumer Electronics Equipment Compatibility" (codified at 47 U.S.C. § 544(A)), specifically addresses the sale of cable equipment.

[15]For example, Rep. Markey explained the intent of equipment regulation as follows: "I say again, because there is a lot of misinformation on this subject, what we do is we ensure that no longer will the consumers of America have to <u>rent</u> their clicker every single month for $4 or $5 . . . We ensure that we are always protected against <u>rate</u> gouging on the converter box." 138 Cong. Rec. H.8652 (Sept. 17, 1992) (Statement of Rep. Markey) (emphasis added).

compatibility provision, there already exists a competitive market for consumer equipment.[16] Consequently, Congress did not intend, and the Commission has no authority, to subject to regulation the sale of equipment.[17]

Time Warner also wishes to reiterate that actual cost regulation should not apply to all equipment that happens to pass the basic tier signals. As the Commission is well aware, many systems provide addressable converters or other pieces of equipment only to those subscribers who elect to take premium services. This equipment also "passes" the basic tier signals, thereby avoiding the need for the installation of two separate devices in the subscriber's home. Nonetheless, NATOA asserts that the statutory requirement for "actual cost" regulation of "equipment used by subscribers to receive the basic tier" must be read as encompassing any and all equipment that passes the basic signals.[18]

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[16]See, Comments Of Time Warner Entertainment Company, L.P., Docket No. 93-7, Appendix 2.

[17]NATOA places considerable emphasis on the phrase "price or rate" in Section 623(b)(3) as evidence of Congress' intent to regulate the sale as well as the rental of equipment. NATOA Opposition at 20 n.25. This argument ignores the fact that the phrase "price or rate" specifically modifies the phrase "installation and lease" of equipment; there simply is no reference to the "sale" of equipment. Further, the legislative history shows that Congress used the terms "price" and "rate" interchangeably. See Senate Report at 85 (Senate Bill requires FCC to set the "price for the installation and lease of equipment" -- clearly, Senate did not intend to regulate sale but not rental charge of equipment). See also House Report at 34 (House bill requires FCC to set "maximum price" for basic service).

[18]NATOA Opposition at 20-21.

What NATOA has failed to recognize is that the word "used" was added to the 1992 Cable Act simply to ensure that the rates charged basic subscribers for remote control devices (which are not, technically, "necessary" to receive basic service) are subject to actual cost regulation.[19] NATOA's argument also ignores the fact that, with respect to basic-only subscribers, the Act specifically provides that equipment used to buy through to pay services is to be subject to actual cost regulation -- a provision that would not have been necessary had Congress intended for Section 623(b)(3) to authorize actual cost regulation of <u>all</u> equipment passing basic signals. In short, NATOA's arguments fail to rebut the arguments presented for reconsidering the Commission's rules concerning equipment rates.[20]

III. Franchise Fees Should Not Be Included In Advertised Rate Quotations.

A number of the petitioners in this proceeding have argued that the Commission should reconsider its decision requiring that franchise fees be included in advertised rates.[21] NATOA takes

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[19] <u>See</u> NCTA Petition at 25; Continental Petition at 16; Cablevision Systems Petition at 8.

[20] Yet another flaw in NATOA's argument is that it does not address the policy implications of the Commission's unduly broad interpretation of the Act. The extent to which the Commission's rules threaten to impede the development of consumer-friendly, multi-purpose telecommunications devices is discussed in detail in the Petition for Reconsideration filed in this proceeding by General Instrument and will not be repeated here.

[21] See Newhouse Broadcasting Corp. Petition at 21-23; TCI Petition at 24-26; Continental Petition at 17-19.

exception to this position, contending that the costs associated with franchise fees are no different than costs associated with renting office space, and should therefore be treated in the same manner. NATOA's argument, however, ignores the fact that the Commission has recognized that franchise fee costs are unlike other costs and has accorded franchise fees different treatment in other situations.

In particular, franchise fees are completely "external" to the Commission's benchmark rate scheme.[22] As such, contrary to NATOA's assertion, franchise fee costs cannot logically be compared to rent payments. While rent and other costs encompassed within a system's maximum permitted rate are appropriately deemed integral elements of an operator's advertised rate, franchise fees (and other external taxes), which are not considered in assessing the reasonableness of a system's rates, are not.

The simple truth is that most businesses, regardless of the product, do not include taxes when advertising rates. There is no logical reason why cable operators should be forced to advertise their rates differently, nor does NATOA attempt to provide one. Further, NATOA does not point to any public benefit which flows from the requirement of including franchise fees in advertised rates. Instead, as a number of petitioners correctly point out, such a requirement will prevent efficient system-wide

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[22]Order at ¶ 254.

advertising and will cause confusion among subscribers.[23] In short, NATOA's opposition to reconsideration of this issue is entirely without merit.

IV. Leased Access Maximum Prices.

The suggestion that a cable operator be required to make public all information supporting its calculation of its highest implicit rates must be rejected.[24] Time Warner, both as a cable system operator and a programmer, treats affiliation agreements between program suppliers and cable operators as highly confidential and proprietary information. Not only would the entire cable industry suffer as a result of competitors' ability to gain access to such proprietary information (thereby decreasing competition), but, as Continental points out, such a scheme would force cable operators into the difficult position of choosing between compensatory rates and public dissemination of trade secrets.[25] Indeed, the Commission itself has recognized

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[23] See, e.g., Continental Petition at 17-18; Cole Raywid and Braverman Petition at 11. Requiring the inclusion of franchise fees in advertised rates will exacerbate the Commission's regulatory burdens by promoting the filing of unnecessary rate complaints. For example, if a system whose non-basic rate of $15.00 (based on 30 channels at a "Line 600" rate of .50/channel) has been approved by the FCC is forced to advertise its service for $15.75 ($15.00 plus a 5 percent franchise fee), subscriber complaints alleging an "unreasonable" rate increase will be inevitable.

[24] See, e.g., Center for Media Education ("CME") Petition at 18.

[25] Continental Opposition at 21-22.

that this type of information should be maintained as confidential when submitted to the Commission.[26]

Similarly untenable is CME's proposal that, in determining whether rates "adversely affect the operation, financial condition or market development of the cable system,"[27] the Commission should not look to the lost opportunity cost to the system, but must wait until the operator produces "hard evidence that the cable operator will cease to operate" before it could properly make such a finding.[28] Such a radical proposal, imposing such a ridiculously high standard -- in essence limiting operators to a "failing company" defense -- must be summarily rejected.

Finally, as pointed out in earlier submissions, in the home shopping context explicit fee comparisons often exist.[29] Valuevision twists the notion of using an explicit fee analysis in an attempt to constrain the maximum price for home shopping services, especially less successful ones, by having the maximum fee determined by a percentage of sales achieved by the leased access programmer. Such an approach could well result in a fee that is inequitable or confiscatory. Obviously, the appropriate

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[26]See 47 C.F.R. §§ 0.457, 0.459.

[27]47 U.S.C. § 612(c)(1).

[28]CME Opposition at 3.

[29]Time Warner focuses in this Reply on the application of the leased access rules in the home shopping context; however, as Time Warner has previously indicated, the categorization of programming is itself an unwise and problematic approach. See Time Warner Opposition at 31.

maximum price should be derived from the dollar amount of revenues received by the cable operator from the home shopping service that supplies the explicit fee comparison, just as the calculations in the "other" and "premium" categories result in a monthly maximum dollar amount that can be charged by the operator.[30] In all events, this controversy highlights the need for a mechanism whereby individual cable operators can show that, in particular cases, the maximum fee dictated by the Commission's formula is not adequate and a higher price should be permitted.

V. MDU Pricing Flexibility Is Procompetitive.

The reckless attacks lodged by Liberty Cable Company, Inc. ("Liberty") against Time Warner's discounted rate structure for multiple dwelling units (MDUs) in New York City only serve to highlight the need for additional flexibility by the Commission with respect to MDU pricing. Cutting through Liberty's self-serving rhetoric, it is evident that Liberty is seeking artificial protection from competition, rather than to foster competition as intended by Congress in the 1992 Cable Act.

As a preliminary matter, Liberty's claim that "it is the only SMATV operator attempting to compete directly with cable" is patently preposterous. Time Warner faces intense competition from multichannel video programming distributors, including SMATV operators, in virtually every community with a significant number

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[30]Therefore, if the highest paying home shopping service on non-leased access provided the operator with 5 percent of its 1992 net sales, which were $3 million, the maximum rate for home shopping services on leased access in 1993 would be $150,000 annually or $12,500 per month.

of MDU buildings. This is understandable given that SMATV operators, such as AMSAT Communications, Nationwide, and Commander Satellite, have no franchise requirements or other barriers to entry, and do not face the same capital obligations as true cable operators. Due to the pervasive availability of SMATV service as an effective competitor to cable in MDU buildings, the Commission should recognize MDU buildings as a sub-category within the franchise area for the purposes of applying the effective competition test embodied in Section 623(l)(1)(B) of the 1992 Cable Act. All MDU rates should be deregulated in any community where the MDU sub-category meets the effective competition test.

The Commission's Order properly recognizes the substantial consumer benefits which accrue from allowing a uniform discount rate structure for MDUs.[31] Rather than disallow these procompetitive practices, as Liberty urges, the Commission should expressly recognize the salutary effects to be achieved in allowing cable operators to offer individually negotiated rates to MDUs where necessary to meet competition. As Time Warner has argued, the uniform bulk rate requirement should not prevent an operator from lowering its price in individual buildings where necessary to meet competition.[32] Liberty would apparently relish

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[31]Order at ¶ 424.

[32]See Time Warner Comments in MM Docket No. 92-266 at 51-56 (filed January 27, 1993); Time Warner Reply Comments in MM Docket No. 92-266 at 70-71, 75-78 (filed February 11, 1993). See, also, 3 P. Areeda & D. Turner, Antitrust Law ¶ 720, at 190-91 (1978) (continued...)

the prospect of locking the cable operator into a rigid uniform rate structure, so that Liberty could easily pluck MDU buildings away from Time Warner by undercutting the prevailing price. Permitting individually negotiated rates, rather than imposing a floor on the local franchised cable operator's discount, would allow consumers in the affected MDUs to enjoy the combined benefits of lower prices and a greater choice among multichannel video programming distributors, including the local franchised cable operator. By contrast, the imposition of a rigidly uniform bulk rate structure would deny many consumers any realistic choice among program providers.

A cable operator's ability to meet its competitor's price is especially important where a competitor, such as Liberty Cable in New York, is not required to comply with costly local government regulation, including service standards and franchise and other fees, and therefore has the ability to offer varying and deep discounts. Indeed, Liberty has engaged in a process of "cream skimming" luxury buildings in small, affluent pockets within Time Warner's Manhattan franchised areas, significantly undercutting Time Warner's retail rates. Liberty's proposal that the Commission retain its "one price fits all" MDU pricing principle is anticompetitive and not justified by the 1992 Cable Act, as

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[32](...continued)
("In the vast majority of situations, discriminatory price cutting -- insofar as primary-line competition is concerned -- will be profitable to the firm concerned and pro-competitive.").

nothing in the Act indicates Congress' intent to hobble the cable operator's ability to compete on price with other MVPDs.

In its effort to obtain Commission protection from the competition it faces from Time Warner, Liberty attacks Time Warner's MDU bulk pricing practice as "predatory." Liberty's claim is baseless and totally inconsistent with the facts.[33] First, Time Warner has not, as Liberty erroneously alleges, offered its bulk discount only to larger Manhattan MDUs or "only to those buildings which were considering switching to Liberty's service."[34] Time Warner's MDU bulk rate structure was approved by the City of New York in November 1992.[35] Time Warner has made its bulk discount available to all MDUs above the threshold set by the franchising authority, and at a standard 25 percent below retail rate -- not (as Liberty claims) below Liberty's rate or "at least 25 percent" lower than the retail rate.

Second, Liberty wrongfully claims that as of July 2, Time Warner was continuing to offer its bulk discount "in a predatory manner, attaching its attorneys' July 2 letters to New York regulatory authorities.[36] Time Warner annexes hereto as Exhibit 2 its response and the City franchising authority's response to Liberty which indicate that notice had been given to

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[33]Under the space constraints of a Reply, Time Warner will not reply here to each and every unsworn allegation that Liberty levels in its Opposition.

[34]Liberty Opposition at ¶ 7.

[35]A copy of the City's approval is annexed as Exhibit 1.

[36]Liberty Opposition at ¶ 6.

all eligible MDU buildings of the availability of the bulk rate and rejecting Liberty's allegations of "predatory conduct."

Indeed, Liberty grossly misperceives what constitutes predation. Contrary to Liberty's unsworn allegation, Time Warner has not offered "each . . . MDU, hotel, or institution [approached by Liberty] a rate lower than Liberty's rate."[37] Even if that did happen, which it did not, it would hardly constitute predatory conduct. Recently the Supreme Court reemphasized that, in general, a fundamental criterion for "predatory pricing" is that prices be set below an appropriate measure of a defendant's own costs. See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., WL 211562 at *9 (U.S. June 21, 1993) ("only below-cost prices should suffice [as predatory pricing], and we have rejected elsewhere the notion that above-cost prices that are below general market levels or the costs of a firm's competitors inflict injury to competition under the antitrust laws.")[38] Since Time Warner's prices are above its

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[37]Id. at ¶ 7.

[38]Liberty also alleges that Time Warner's bulk rate is predatory because Time Warner offers it only in Manhattan and "not in adjacent franchise areas . . . where Liberty does not currently seek to compete with Time Warner, all of which are typically less affluent." (Liberty Opp. at ¶ 7 n.8.) This has nothing to do with predatory conduct under any accepted definition of that term. In fact, Liberty is incorrect in its statement since it and other multichannel video programming distributors operators offer service in Queens and Brooklyn, New York. Moreover, bulk rate discounts are not some recently designed "scheme" as Liberty suggests. Time Warner marketed its cable services in New York and elsewhere through bulk rates long before Liberty came into existence. In any event, nothing in the 1992 Cable Act was intended to prevent Time Warner from competing against Liberty, including on the basis of prices offered.

costs, it is engaging in competition on the merits, not predatory pricing. Moreover, Liberty's claims of competitive injury are highly suspect since Liberty's own submission extols itself as very successful in competing against Time Warner.[39]

CONCLUSION

As Time Warner and other cable industry parties have demonstrated, there is a pressing need for the Commission to reconsider and revise various aspects of its Report and Order in this proceeding. Time Warner urges the Commission to adopt the proposals set forth herein and in its earlier pleadings.

Respectfully submitted,

TIME WARNER ENTERTAINMENT COMPANY, L.P.

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Dated: August 4, 1993

8895

[39] Liberty Opposition at ¶ 2.

EXHIBIT 1

THE CITY OF NEW YORK
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
75 Park Place, 6th Floor
New York, New York 10007

William F. Squadron
Commissioner

Telephone: (212) 788-6540
Facsimile: (212) 788-6551

November 18, 1992

Richard Aurelio
President
Time Warner New York City Cable Group
Time-Life Building, Rockefeller Center
New York, New York 10020

Re: Bulk Rate Proposal

Dear Mr. Aurelio:

Pursuant to Section 5.4 of the 1990 franchise agreements, the Manhattan system of Time Warner Cable of New York City ("MCTV") and Paragon Cable Manhattan ("Paragon") may only enter into bulk rate pricing arrangements in the provision of cable television services if such arrangements are in conformance with a written plan submitted to and approved by the City's Commissioner of the Department of Telecommunications and Energy ("DTE"). By letter dated October 10, 1992 you submitted for MCTV and Paragon an Amended Bulk Rate proposal, revising previous proposals in response to concerns raised by DTE. DTE has reviewed the October 10 proposal and has determined that, provided MCTV and Paragon accept and agree to certain changes and additions to that proposal which are specified below, such proposal, as thus amended, is designed to meet the public interest and is approved for implementation.

The franchise agreement restrictions on bulk rate arrangements reflect concerns that such arrangements may create unfair pricing distinctions to the advantage of a small number of subscribers, and might allow non-franchised building owners to profit inappropriately by "marking up" cable fees.

However, DTE has found that the October 10 proposal, as amended as required below, would make available a discounted price option for cable service to a substantial portion of the multiple dwelling buildings in Manhattan, in neighborhoods throughout the borough, and that such proposal contains substantial protections against inappropriate mark-ups of cable prices. DTE has also found that the proposed bulk rate programs, as amended, may facilitate completion of the current cable upgrade program, reduce illegal theft of cable service, improve the ability of MCTV and Paragon to provide prompt service repairs, reduce the incidence of service problems, and improve video signal quality by reducing theft-related signal leakage. DTE has also found that bulk rate programs of the type proposed are widespread in urban areas in the United States and have proven to be in the public interest.

For the foregoing reasons, DTE finds that the October 10 proposal, with the changes set forth below, will enhance the public interest and is therefore approved, provided that MCTV and Paragon agree to the changes set forth below by countersigning a copy of this letter in the spaces designated and returning an original countersigned copy.

The changes to the October 10 proposal that Paragon and MCTV must agree to prior to this approval becoming effective are as follows:

(1) The eligibility threshold of 20 units which was proposed in the October 10 letter must be reduced to 15 units. That is, the bulk rate option must be offered to all buildings in the franchise area that contain fifteen or more units.

(2) No less than ten business days before sending out the notices in the form of Exhibit C attached to your October 10 proposal, MCTV and Paragon will offer DTE the opportunity to provide an accompanying letter from DTE to building owners, and if DTE opts to provide such a letter, MCTV and Paragon will include such a letter in its distribution of the Exhibit C notice.

(3) No bulk rate agreement shall extend beyond the end of Paragon and MCTV's current franchise period. Thus, any bulk rate agreements which may be entered into after September 30, 1993 must expire no later than September 30, 1998, notwithstanding the maximum five year term provided in Section IX of your proposed bulk billing agreement. At the end of the current franchise period the City will review the bulk rate program to determine whether the continuation of bulk rates remains in the public interest, or whether modifications or termination is appropriate.

(4) Notwithstanding footnote 3 on page 1 of the proposed bulk billing agreement, which covers installation charges, under no circumstances may the installation charge per unit for any bulk building that has not previously had cable service exceed the company's then-prevailing standard installation charge for residential units. This maximum charge for installation shall apply regardless of the "Company's cost of labor and materials" referred to in footnote 3.

(5) On March 1, 1993, and on March 1 of every year thereafter through March 1, 1998, MCTV and Paragon will each submit a report to DTE listing all buildings with which it had a current bulk rate agreement as of December 31 of the preceding year. Such report will specify, for each agreement, the term of the agreement, the building address, the number of units in the building, the tier of bulk service provided, the form of ownership of the building (rental, condominium, cooperative), any installation charges imposed at the building and any other relevant information DTE may request.

Subject to acceptance of the preceding changes, the October 10, 1992 bulk rate proposal is hereby approved, effective immediately.

Yours truly,

Bill Squadron

The conditions set forth are accepted and agreed to:

Manhattan Cable Television

By: ______________________

Paragon Cable Manhattan

By: ______________________

EXHIBIT 2

THE CITY OF NEW YORK
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY
75 Park Place, 6th Floor
New York, New York 10007

William F. Squadron
Commissioner

Telephone: (212) 788-6540
Facsimile: (212) 788-6551

July 19, 1993

Andrew S. Berkman, Esq.
575 Madison Avenue, 3rd Floor
New York, New York 10022

Dear Mr. Berkman:

I write in response to your July 2, 1993 letter.

With regard to point 2 of your letter, we have asked Time Warner not to claim in any further correspondence that bulk rate arrangements have been authorized by the state. As you know, the City's position is that no state authorization is required. Time Warner has agreed to abide by DTE's request.

Your other points do not seem to require any further action by this agency:

- point 1: There is no requirement that every envelope sent out by Time Warner be dated. Time Warner has submitted evidence to this agency that its bulk rate notices were sent out on a timely basis. If you have any evidence to the contrary, you may submit it.

- point 3: There is no requirement that the bulk rate notice include or refer to every term or condition of a contract that may be subsequently offered. As noted above, the City's position is that Time Warner has received all necessary approvals required to offer bulk rate service, thus we obviously cannot agree that a requirement of further approval should be included in notices.

- point 4: A landlord that wishes to enter into a bulk rate arrangement (whether with Time Warner, Liberty or any other bulk rate provider) that would affect rent regulated apartments may, under some conditions, have to obtain certain consents, approvals or waivers. This agency is not aware of any circumstance in which this issue has yet arisen, nor is it clear to us why such a requirement would mean that the mere offering of bulk rate service by Time Warner, Liberty or others would "run afoul" of any law.